

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)
	) <b>Administrative Order on Consent</b>
<b>BAD RIVER BAND OF LAKE</b>	) <b>Under Section 309(a) of the Clean Water</b>
<b>SUPERIOR TRIBE OF CHIPPEWA</b>	) <b>Act, 33 U.S.C. § 1319(a)</b>
<b>INDIANS</b>	)
	)
<i>For the Bad River Wastewater Treatment</i>	)
<i>Plant, NPDES Permit No. WI-0036587;</i>	)
<i>Birch Hill Stabilization Lagoon, NPDES</i>	)
<i>Permit No. WI-0036579; and Diaperville</i>	)
<i>Stabilization Lagoon, NPDES Permit No.</i>	)
<i>WI-0036544</i>	)
	)
<b>Respondent</b>	)

**I. INTRODUCTION**

1. The U.S. Environmental Protection Agency ("EPA") makes the findings of fact set forth below (Section IV) and is issuing this Administrative Order on Consent ("Order on Consent" or "Order") to the Bad River Band of Lake Superior Tribe of Chippewa Indians ("Respondent") under the authority of Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue such Orders to the Regional Administrator of EPA, Region 5, who redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA, Region 5.
2. This Order is mutually entered into by EPA and Respondent.
3. At all times relevant to this Order, Respondent has owned and operated the Bad River Wastewater Treatment Plant, located at 54173 Birch Street, New Odanah, Wisconsin; the Birch Hill Stabilization Lagoon, located in Birch Hill, Wisconsin (NW ¼ of NE ¼ of Section 36, T47N, R2W); and the Diaperville Stabilization Lagoon, located in Diaperville, Wisconsin, (S ½ of Section 26, T48N, R3W) (the "Facilities").
4. EPA alleges that Respondent failed to comply with National Pollutant Discharge Elimination System ("NPDES") Permit No. WI-0036587 at the Bad River Wastewater Treatment Plant; Permit No. WI-0036579 at the Birch Hill Stabilization Lagoon; and Permit No. WI-0036544 at the Diaperville Stabilization Lagoon, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
5. By entering into this Order, Respondent: (1) consents to EPA's authority to issue this Order; (2) neither admits nor denies the factual allegations as set forth in this Order; (3) agrees to undertake all actions required by the terms and conditions of this Order; and (4) agrees not to

contest the authority of EPA to issue this Order or the validity of any terms or conditions in this Order.

6. For the purposes of this Order only, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

## **II. STATUTORY AUTHORITY**

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
8. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to navigable waters. Violation of an NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
9. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), provides that whenever EPA finds that any person is in violation of requirements of, *inter alia*, Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1342, or is in violation of any condition or limitation that implements those sections in an NPDES permit, EPA shall issue an order requiring such person to comply with such requirements, conditions, or limitations. Section 309(a)(5) of the CWA, 33 U.S.C. § 1319(a)(5), requires that any such order shall specify a time for compliance that EPA determines to be reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

## **III. DEFINITIONS**

10. All terms used, but not defined, in this Order have the meanings provided to them in the CWA, 33 U.S.C. § 1251 *et seq.*, and the effective EPA regulations promulgated under the CWA.
11. “Act” or “CWA” means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*
12. “Bad River Facility” means the Bad River Wastewater Treatment Plant, located at 54173 Birch Street, New Odanah, Wisconsin, which is authorized to discharge in compliance with NPDES Permit No. WI-0036587.
13. “Birch Hill Facility” means the Birch Hill Stabilization Lagoon, located in Birch Hill, Wisconsin, (NW ¼ of NE ¼ of Section 36, T47N, R2W), which is authorized to discharge in compliance with Permit No. WI-0036579.

14. “Day” or “days” means a calendar day or calendar days unless expressly stated to be a business day. When computing any period of time under this Order, should the last day fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
15. “Diaperville Facility” means the Diaperville Stabilization Lagoon, located in Diaperville, Wisconsin, (S ½ of Section 26, T48N, R3W), which is authorized to discharge in compliance with Permit No. WI-0036544.
16. “Discharge of a pollutant,” as defined in Section 502(12) of the CWA, means *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
17. “Effective Date” has the definition provided in Section VIII of this Order.
18. “EPA” means the United States Environmental Protection Agency.
19. “Infiltration and inflow” or “I/I” means the total quantity of water from both infiltration and inflow without distinguishing the source.
20. “Infiltration” means the water entering a sewer system and service connections from the ground, through such means as, but not limited to: defective pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.
21. “Inflow” means the water discharged into a sewer system, including service connections, from such sources as, but not limited to: roof leaders; cellar, yard and area drains; foundation drains; cooling water discharges; drains from springs and swampy areas; manhole covers; cross connections from storm sewers and combined sewers; catch basins; storm waters; surface run-off; street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.
22. “Facilities” means the Bad River Wastewater Treatment Plant, Birch Hill Stabilization Lagoon, and the Diaperville Stabilization Lagoon.
23. “Navigable waters,” as defined in Section 502(7) of the CWA, means “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
24. “NPDES Permit” and “Permit” mean the permit issued in accordance with the National Pollutant Discharge Elimination System (NPDES) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. In this Order, these terms mean NPDES Permit No. WI-0036587 issued to Respondent for the Bad River Wastewater Treatment Plant with the effective date of July 16, 2019, and the expiration date of July 15, 2024; Permit No. WI-0036579, issued to Respondent for the Birch Hill Stabilization Lagoon with the effective date of July 16, 2019, and the expiration date of July 15, 2024; and Permit No. WI-0036544, issued to Respondent for the Diaperville Stabilization Lagoon with the effective date of July 16, 2019, and the expiration date of July 15, 2024. For purposes of Sections IV through IX of this Order,

“Permit” or “Permits” also means any subsequent NPDES permits issued to Respondent for the Facilities, until such time as this Order is terminated.

25. “Order on Consent” and “Order” means this document, all attachments hereto, and all subsequent modifications thereto, including incorporated submissions from Respondent, as described in paragraph 70.
26. “Outfall” means a type of “point source,” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), that serves as a discharge point from the facility. “Outfall” followed by an Arabic numeral means that Outfall assigned that number in Respondent’s NPDES permits.
27. “Paragraph” means a portion of this Order identified by an Arabic numeral.
28. “Parties” means the EPA and Respondent.
29. “Person,” as defined in Section 502(5) of the CWA, means an “individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5). A “municipality,” as defined in Section 502(4) of the CWA, includes “an Indian tribe or an authorized Indian tribal organization.” 33 U.S.C. § 1362(4).
30. “Point source,” as defined in Section 502(14) of the CWA, means “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
31. “Pollutant,” as defined in Section 502(6) of the CWA, means “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).
32. “Publicly Owned Treatment Works” or “POTW” means a treatment works, as defined in Section 212 of the CWA, 33 U.S.C. § 1292(2), that is owned by a State, Tribe, or a municipality (as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4)). Pursuant to 40 C.F.R. § 403.3(q), the definition of POTWs includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4), that has jurisdiction over indirect and direct discharges to such a treatment works.
33. “Respondent” means the Bad River Band of Lake Superior Tribe of Chippewa Indians.
34. “Work” means any and all activities Respondent is required to undertake and accomplish to achieve compliance under this Order.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

35. Bad River Band of Lake Superior Tribe of Chippewa Indians ("Respondent") is a federally recognized Indian tribe.
36. For purposes of federal enforcement, the Respondent is a "person" as that term is defined in sections 502(4) and (5) of the Act, 33 U.S.C. §§ 1362(4) and (5), and 40 C.F.R. § 122.2.
37. At all times relevant to this Order, Respondent owned and operated the Bad River Wastewater Treatment Plant, Birch Hill Stabilization Lagoon, and Diaperville Stabilization Lagoon.
38. At all times relevant to this Order, Bad River Wastewater Treatment Plant Outfall No. 002 discharged pollutants including *E. coli*, biochemical oxygen demand (BOD) (5-day, 20 deg. C), phosphorus, and total suspended solids into the Bad River. Discharges of pollutants from the Bad River Wastewater Treatment Plant are authorized when in compliance with Permit No. WI-0036587, which includes numeric effluent limitations for pollutants discharged from Outfall No. 002.
39. Outfall No. 002 at the Bad River Wastewater Treatment Plant is a "point source," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
40. At all times relevant to this Order, Birch Hill Stabilization Lagoon Outfall No. 001 discharged pollutants including *E. coli*, biochemical oxygen demand (BOD) (5-day, 20 deg. C), and total suspended solids into Birch Hill Swamp. Discharges of pollutants from the Birch Hill Stabilization Lagoon are authorized when in compliance with Permit No. WI-0036579, which includes numeric effluent limitations for pollutants discharged from Outfall No. 001.
41. Outfall No. 001 at the Birch Hill Stabilization Lagoon is a "point source," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
42. At all times relevant to this Order, Diaperville Stabilization Lagoon Outfall No. 001 discharged pollutants including *E. coli*, biochemical oxygen demand (BOD) (5-day, 20 deg. C), and total suspended solids into Hanson Swamp. Discharges of pollutants from the Diaperville Stabilization Lagoon are authorized when in compliance with Permit No. WI-0036544, which includes numeric effluent limitations for pollutants discharged from Outfall No. 001.
43. Outfall No. 001 at the Diaperville Stabilization Lagoon is a "point source," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

44. *E. coli*, biochemical oxygen demand (BOD) (5-day, 20 deg. C), phosphorus, and total suspended solids are “pollutants,” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
45. The discharges described in paragraphs 38, 40, and 42 are “discharges of a pollutant,” as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
46. The Bad River is a “navigable water” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362(7).
47. At all times relevant to this Order, the outfall at the Bad River Wastewater Treatment Plant acted as a point source of “discharges” of “pollutants” with its final wastewater discharge to the Bad River.
48. At all times relevant to this Order, the outfall at the Birch Hill Stabilization Lagoon acted as a point source of “discharges” of “pollutants” with its final wastewater discharge to Birch Hill Swamp, thence to an unnamed tributary of the Potato River, thence to the Potato River, thence to the Bad River.
49. At all times relevant to this Order, the outfall at the Diaperville Stabilization Lagoon acted as a point source of “discharges” of “pollutants” with its final wastewater discharge to Hanson Swamp, thence to the White River, thence to the Bad River.
50. Because Respondent owned or operated facilities with outfalls that acted as point sources for the discharge of pollutants to navigable waters, Respondent and the Facilities have been subject to the CWA at all times relevant to this Order. Thus, any such discharge has been and is subject to the specific terms and conditions prescribed in the applicable permit.
51. Respondent applied for and was issued NPDES permits No. WI-0036587, WI-0036579, and WI-0036544, under Section 402 of the CWA, 33 U.S.C. § 1342, which became effective on July 16, 2019. At all times relevant to this Order, Respondent was authorized to discharge pollutants from the facility to navigable waters only in compliance with the specific terms and conditions of the Permits.
52. The Permits require Respondent to sample and test its effluent and monitor its compliance with Permit conditions and applicable regulations, according to specific procedures. The Permits also require Respondent to file certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring and Noncompliance Reports with EPA as appropriate.
53. The Permits contain effluent limitations that place certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Part I.A. of the Bad River Wastewater Treatment Plant Permit, and Part I.B. of the Birch Hill Stabilization Lagoon Permit and Diaperville Stabilization Lagoon Permit, which are incorporated herein by reference.



54. Permittees must monitor discharges and report results in their DMRs, as required by their permits.
55. Certified DMRs filed by Respondent with EPA, as required by the Permits, show discharges of pollutants from the Facilities that exceed the permitted effluent limitations established in the Permits, which are incorporated herein by reference. The list of discharges of pollutants exceeding effluent limits in the Permits is included in Attachment A to this Order.
56. The Permits, which became effective on July 16, 2019, require Respondent to submit non-DMR reports with specific due dates to EPA, including Operation & Maintenance Plan Reports, Pollutant Minimization Program for Mercury Status Reports, Mercury Operational Evaluation Reports, Feasible Alternative Analysis and Status Reports, and Phosphorus Operational Evaluation Reports. Respondent failed to submit the above reports for each Facility as summarized in Attachment B of this Order.
57. Respondent is a person who discharged pollutants from point sources into navigable waters, in violation of its Permits. Accordingly, each instance in which Respondent discharged pollutants to navigable waters in amounts exceeding the effluent limitations contained in the Permits is a violation of the Permits and Section 301 of the CWA, 33 U.S.C. § 1311.
58. On August 28, 2019, EPA issued an administrative order on consent to the Respondent to address past effluent limit violations at the Bad River and Birch Hill Facilities.

## **V. ORDER ON CONSENT**

59. Based on the foregoing findings and the authority vested in the undersigned Director, Enforcement and Compliance Assurance Division, it is hereby ordered and agreed to in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), that Respondent comply with the following actions:
  - A. Birch Hill Stabilization Lagoon: By June 30, 2022, Respondent must submit a corrective action plan for EPA's review and approval describing the lagoon expansion project to be designed and constructed to correct the effluent limitation violations specified in Attachment A to this Order. The plan must include a schedule to complete all work necessary, including completion of final design, construction startup, and construction completion. Respondent must complete implementation of the corrective action plan and correct the violations by no later than December 31, 2024, and in accordance with the approved corrective action plan schedules and milestones.
  - B. Bad River Wastewater Treatment Plant:
    - i. To address the chronic *E.coli* effluent limitation violations specified in Attachment A to this Order, by March 25, 2022, Respondent must develop, implement, and submit for EPA's review and approval a standard operating procedure for proper operations and maintenance of the ultraviolet ("UV") disinfection system at the Bad

River Wastewater Treatment Plant, including a schedule for routine cleaning and replacement of UV bulbs.

- ii. Respondent must implement the work items contained in the June 2020 *Preliminary Engineering Report for Bad River New Odanah And Frank's Field Sewer Improvements* ("I&I Plan"), designed to minimize I&I which contributes to the effluent limitation violations for this Facility as specified in Attachment A to this Order. Respondent must obtain project funding by September 30, 2022, and complete implementation of the I&I Plan by no later than December 31, 2023.

**C. Diaperville Stabilization Lagoon:**

- i. Within 120 days after the effective date of this Order, Respondent must submit a plan for EPA's review and approval describing the specific actions to be taken to correct the effluent limitation violations for the Diaperville Stabilization Lagoon that are summarized in Attachment A to this Order. The plan must include schedules including milestones and final compliance dates and estimated costs to complete all work necessary to correct the violations.
- ii. Upon EPA approval of the plan pursuant to paragraph 59(C)(i), above, Respondent must implement the plan in accordance with the approved schedules, milestones, and final compliance dates.

**D. Non-DMR Reporting:** Within 90 days after the effective date of this Order, Respondent must submit all overdue reports summarized in Attachment B.

**VI. DOCUMENTATION AND SUBMISSIONS**

60. Respondent must submit a status report to EPA within 30 days of the end of each calendar-year quarter (i.e., by January 31, April 30, July 31, and October 31), until this Order is terminated. The first status report will be due within 30 days of completion of the first full quarter after the effective date of this Order. Each status report must include: (a) a description of the actions that have been taken toward achieving compliance with this Order during the previous quarter; (b) with regard to actions taken in response to paragraph 59, an assessment of the effectiveness of such actions in preventing effluent violations; (c) a summary of all effluent violations that occurred during the previous quarter; (d) an analysis of the cause of each such effluent violation; and (e) an assessment of whether compliance milestone dates due during the quarter were met, and, if not, the dates when the milestones will be met and the steps the Respondent is taking to ensure it completes the milestones.
61. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: [r5weca@epa.gov](mailto:r5weca@epa.gov), [maraldo.dean@epa.gov](mailto:maraldo.dean@epa.gov), and [wester.barbara@epa.gov](mailto:wester.barbara@epa.gov). The subject line of all email correspondence must include the facility name, WI-0036587, and the subject of the deliverable. All electronically-submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR)



applied. Any information containing confidential business information must be submitted and asserted as set forth at 40 C.F.R. Part 2 Subpart B and must be submitted by email to maraldo.dean@epa.gov and wester.barbara@epa.gov or by mail (see below) but not to the r5weca@epa.gov address. Mailed submissions must be sent to the following addresses:

Attn: Dean Maraldo, EPA Case Manager  
Water Enforcement Compliance Assurance Branch (ECW-15J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Attn: Barbara Wester  
Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

62. Within 10 days of the effective date of this Order, Respondent must designate a Project Coordinator and provide EPA's Case Manager (above) with the Project Coordinator's name, address, phone number, and email address.
63. In the event of a change to either the EPA Case Manager or the Project Coordinator, parties must provide notification in writing, pursuant to paragraphs 61 and 62 above, within 30 days after the change.
64. EPA may require additional status reports, or fewer status reports, for the purpose of documenting the progress of the Work performed pursuant to this Order or compliance with the Permit requirements. Should EPA require additional status reports, EPA will provide Respondent with at least 15 days from the date of EPA's request to submit the reports.
65. All reports, notifications, documentation, and submissions required by this Order must be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22(b) and (d) and must include the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
66. Respondent may not withhold information based on a claim that it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business

confidentiality regarding any portion of the information submitted in response to this Order. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Certain information related to effluent data (as defined in 40 C.F.R. § 2.302(a)(2)) and NPDES permit applications may not be entitled to confidential treatment. 40 C.F.R. § 122.7. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a claim of business confidentiality when it submits the information, EPA may make the information available to the public without further notice. 40 C.F.R. § 2.203(c).

67. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify EPA immediately. Knowingly submitting false information to EPA may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), as well as 18 U.S.C. § 1001 and 1341.
68. Submissions required by this Order must be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.
69. Absent an extension of time granted in writing by EPA, EPA may determine that late submissions fail to meet the requirements of this Order.
70. Upon EPA approval, submissions by Respondent are incorporated and enforceable as part of this Order. In case of inconsistency between any submission by Respondent and this document and its subsequent modifications, this document and its subsequent modifications shall control.
71. EPA may use any information submitted in response to this Order in support of an administrative, civil, or criminal action against Respondent.
72. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

## **VII. GENERAL PROVISIONS**

73. Respondent has had the opportunity to confer with and submit information to EPA concerning the validity and provisions of this Order.
74. The terms of this Order are binding on Respondent and its assignees and successors. Respondent must give notice of this Order to any successors in interest prior to transferring ownership, and must simultaneously verify to EPA, at the address specified in paragraph 61, that Respondent has given the notice.
75. The undersigned signatory for each party has the authority to bind each respective party to the terms and conditions of this Order.
76. Failure to comply with this Order may subject Respondent to penalties up to \$56,460 per day

for each violation (or as penalty levels may be later adjusted at 40 C.F.R. Part 19) pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19.

77. This Order does not affect Respondent's responsibility to comply with the CWA, its Permits, and any other local, state, and federal laws and regulations.
78. This Order does not restrict EPA's authority to enforce the Permits or any section of the CWA or its implementing regulations.
79. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order and any other violation of the CWA or of this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited in this Order, for any other violations of the CWA or of this Order committed by Respondent.
80. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal penalties for violations of the CWA. Specifically, EPA may:
  - A. assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of up to \$22,584 per day of violation for violations of Section 301 of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after December 23, 2020, for up to a total of \$282,293, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19;
  - B. seek civil injunctive relief and penalties for violations of the CWA under 33 U.S.C. § 1319(b) and civil judicial penalties for violations of this Order under 33 U.S.C. § 1319(d). In accordance with 40 C.F.R. Part 19, EPA may seek civil judicial penalties of up to \$56,460 per day of violation for violations that occurred after November 2, 2015 and for which penalties are assessed on or after December 23, 2020, or as penalty levels may be later adjusted at 40 C.F.R. Part 19; and
  - C. seek criminal penalties, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).
81. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of work described in paragraph 59 is restitution, remediation, or required to come into compliance with the law.

## **VIII. EFFECTIVE DATE**

82. This Order shall become effective upon signature by EPA below and will remain in effect until EPA has notified Respondent of termination of the Order pursuant to paragraphs 84 or 86.

83. The August 28, 2019, administrative consent order is terminated upon the effective date of this Order.


**IX. FINAL REPORT AND TERMINATION OF THIS ORDER**

84. EPA may terminate this Order at any time by written notice to Respondent.

85. Absent the notice described in paragraph 84 and within 30 days after Respondent concludes that it has achieved compliance with all requirements of this Order, Respondent must submit to the EPA Case Manager a written final report and certification of completion describing all actions taken to comply with all requirements of this Order. Respondent must follow the procedures set forth at Section VI of this Order.

86. After receipt and review of Respondent's final report and certification of completion submitted pursuant to paragraph 85, EPA will notify Respondent whether it has satisfied all requirements of this Order under the procedures set forth at Section VI of this Order. If EPA concludes that Respondent has failed to satisfy the requirements of this Order, EPA may require further actions as set forth under this Order or it may pursue administrative or civil judicial actions.

**FOR RESPONDENT, BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF  
CHIPPEWA INDIANS:**

  
\_\_\_\_\_  
Signature

2-4-22  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael Wiggins Jr  
Chairperson

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

Michael D. Harris

Division Director

Enforcement and Compliance Assurance Division

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*Signature and Date*

## ATTACHMENT A – EFFLUENT LIMIT EXCEEDANCES

### Bad River WWTP

Effluent Limit Exceedances Report

WI0036587: BAD RIVER BAND, ODANAH, WI 54861

Monitoring Period Date Range: 06/01/2016 to 03/31/2021

#### Exceedance Details

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Limit Value Qualifier	Limit Value	DMR Value Unit
6/30/2016	Oxygen, dissolved (DO)	MINIMUM	3.6	>=	5	mg/L
7/31/2016	Oxygen, dissolved (DO)	MINIMUM	4	>=	5	mg/L
8/31/2016	Oxygen, dissolved (DO)	MINIMUM	3.7	>=	5	mg/L
9/30/2016	Oxygen, dissolved (DO)	MINIMUM	4	>=	5	mg/L
10/31/2016	Oxygen, dissolved (DO)	MINIMUM	4.1	>=	5	mg/L
11/30/2016	Oxygen, dissolved (DO)	MINIMUM	3.9	>=	5	mg/L
12/31/2016	Oxygen, dissolved (DO)	MINIMUM	4.1	>=	5	mg/L
1/31/2017	Oxygen, dissolved (DO)	MINIMUM	4.2	>=	5	mg/L
2/28/2017	Oxygen, dissolved (DO)	MINIMUM	3.5	>=	5	mg/L
3/31/2017	Oxygen, dissolved (DO)	MINIMUM	4.1	>=	5	mg/L
4/30/2017	Oxygen, dissolved (DO)	MINIMUM	3.7	>=	5	mg/L
5/31/2017	Oxygen, dissolved (DO)	MINIMUM	2.7	>=	5	mg/L
6/30/2017	Oxygen, dissolved (DO)	MINIMUM	3.3	>=	5	mg/L
6/30/2017	E. coli	DAILY MX	240	<=	235	#/100mL
7/31/2017	Oxygen, dissolved (DO)	MINIMUM	2.9	>=	5	mg/L
8/31/2017	Oxygen, dissolved (DO)	MINIMUM	3.2	>=	5	mg/L
8/31/2017	Phosphorus, total (as P)	WKLY AVG	2.7	<=	2	mg/L
8/31/2017	Phosphorus, total (as P)	MO AVG	1.5	<=	1	mg/L
9/30/2017	Oxygen, dissolved (DO)	MINIMUM	2.6	>=	5	mg/L
10/31/2017	Oxygen, dissolved (DO)	MINIMUM	2.4	>=	5	mg/L
11/30/2017	Oxygen, dissolved (DO)	MINIMUM	3.4	>=	5	mg/L
11/30/2017	Phosphorus, total (as P)	MO AVG	1.7	<=	1	mg/L
11/30/2017	Phosphorus, total (as P)	WKLY AVG	1.13	<=	1.06	kg/d
11/30/2017	Phosphorus, total (as P)	WKLY AVG	3.4	<=	2	mg/L
12/31/2017	Oxygen, dissolved (DO)	MINIMUM	3.1	>=	5	mg/L
1/31/2018	Oxygen, dissolved (DO)	MINIMUM	3	>=	5	mg/L
2/28/2018	BOD, 5-day, 20 deg. C	WKLY AVG	56	<=	45	mg/L
2/28/2018	Solids, total suspended	WKLY AVG	98	<=	45	mg/L
5/31/2018	BOD, 5-day, 20 deg. C	WKLY AVG	88	<=	45	mg/L
5/31/2018	Solids, total suspended	WKLY AVG	95	<=	45	mg/L
5/31/2018	Phosphorus, total (as P)	WKLY AVG	3	<=	2	mg/L
5/31/2018	E. coli	DAILY MX	2000	<=	235	#/100mL
5/31/2018	E. coli	30DA GEO	317	<=	126	#/100mL
6/30/2018	E. coli	DAILY MX	2000	<=	235	#/100mL
6/30/2018	E. coli	30DA GEO	584	<=	126	#/100mL
7/31/2018	Phosphorus, total (as P)	MO AVG	2	<=	1	mg/L



## Bad River WWTP

### Effluent Limit Exceedances Report

WI0036587: BAD RIVER BAND, ODANAH, WI 54861

Monitoring Period Date Range: 06/01/2016 to 03/31/2021

### Exceedance Details

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Limit Value Qualifier	Limit Value	DMR Value Unit
7/31/2018	E. coli	30DA GEO	179	<=	126	#/100mL
7/31/2018	E. coli	DAILY MX	2000	<=	235	#/100mL
12/31/2018	Solids, total suspended	MO AVG	34	<=	30	mg/L
12/31/2018	Solids, total suspended	WKLY AVG	79	<=	45	mg/L
12/31/2018	Solids, suspended percent removal	MN % RMV	75	>=	85	%
1/31/2019	Solids, total suspended	WKLY AVG	65	<=	45	mg/L
1/31/2019	Solids, suspended percent removal	MN % RMV	76.5	>=	85	%
2/28/2019	BOD, 5-day, 20 deg. C	WKLY AVG	66	<=	45	mg/L
2/28/2019	BOD, 5-day, 20 deg. C	MO AVG	36.6	<=	30	mg/L
2/28/2019	Solids, total suspended	MO AVG	42	<=	30	mg/L
2/28/2019	Solids, total suspended	WKLY AVG	75.5	<=	45	mg/L
2/28/2019	Phosphorus, total (as P)	WKLY AVG	3.2	<=	2	mg/L
2/28/2019	Phosphorus, total (as P)	MO AVG	1.7	<=	1	mg/L
2/28/2019	BOD, 5-day, percent removal	MINIMUM	81.6	>=	85	%
2/28/2019	Solids, suspended percent removal	MN % RMV	63.4	>=	85	%
6/30/2019	E. coli	DAILY MX	2000	<=	235	#/100mL
9/30/2019	E. coli	DAILY MX	620	<=	235	#/100mL
10/31/2019	Phosphorus, total (as P)	MO AVG	1.1	<=	1	mg/L
10/31/2019	Phosphorus, total (as P)	WKLY AVG	2.8	<=	2	mg/L
11/30/2019	Phosphorus, total (as P)	WKLY AVG	2.6	<=	2	mg/L
3/31/2020	E. coli	DAILY MX	2000	<=	235	#/100mL
4/30/2020	E. coli	DAILY MX	1700	<=	235	#/100mL
7/31/2020	E. coli	DAILY MX	780	<=	235	#/100mL
9/30/2020	E. coli	DAILY MX	410	<=	235	#/100mL
10/31/2020	E. coli	30DA GEO	249.5	<=	126	#/100mL
10/31/2020	E. coli	DAILY MX	1000	<=	235	#/100mL
11/30/2020	E. coli	DAILY MX	240	<=	235	#/100mL
1/31/2021	E. coli	DAILY MX	1200	<=	235	#/100mL
1/31/2021	E. coli	30DA GEO	128.7	<=	126	#/100mL
2/28/2021	Solids, total suspended	WKLY AVG	39.18	<=	24.04	kg/d
2/28/2021	Solids, total suspended	WKLY AVG	183.5	<=	45	mg/L
2/28/2021	Solids, total suspended	MO AVG	51.9	<=	30	mg/L
2/28/2021	E. coli	DAILY MX	1200	<=	235	#/100mL
2/28/2021	E. coli	30DA GEO	301.2	<=	126	#/100mL
2/28/2021	Solids, suspended percent removal	MN % RMV	66	>=	85	%
3/31/2021	E. coli	DAILY MX	320	<=	235	#/100mL

## Birch Hill Stabilization Lagoon

### Effluent Limit Exceedances Report

WI0036579: BAD RIVER INDIAN RESERVATION, BIRCH HILL, WI 54861

Monitoring Period Date Range: 06/01/2016 to 03/31/2021

### Exceedance Details

Monitoring			DMR	Limit		DMR
Period Date	Parameter Description	Limit Type	Value	Value	Limit	Value
				Qualifier	Value	Unit
9/30/2016	Solids, suspended percent removal	MN % RMV	33	>=	65	%
2/28/2017	BOD, 5-day, 20 deg. C	MO AVG	37	<=	30	mg/L
2/28/2017	BOD, 5-day, 20 deg. C	MO AVG	51.79	<=	42.18	kg/d
2/28/2017	BOD, 5-day, percent removal	MN % RMV	78	>=	85	%
3/31/2017	BOD, 5-day, 20 deg. C	WKLY AVG	46	<=	45	mg/L
3/31/2017	BOD, 5-day, 20 deg. C	MO AVG	46	<=	30	mg/L
3/31/2017	BOD, 5-day, 20 deg. C	WKLY AVG	64.35	<=	63.04	kg/d
3/31/2017	BOD, 5-day, 20 deg. C	MO AVG	64.35	<=	42.18	kg/d
3/31/2017	BOD, 5-day, percent removal	MN % RMV	72	>=	85	%
4/30/2017	BOD, 5-day, 20 deg. C	MO AVG	41	<=	30	mg/L
4/30/2017	BOD, 5-day, 20 deg. C	MO AVG	57.37	<=	42.18	kg/d
4/30/2017	BOD, 5-day, 20 deg. C	WKLY AVG	60	<=	45	mg/L
4/30/2017	BOD, 5-day, 20 deg. C	WKLY AVG	83.95	<=	63.04	kg/d
4/30/2017	BOD, 5-day, percent removal	MN % RMV	84	>=	85	%
5/31/2018	BOD, 5-day, 20 deg. C	MO AVG	70.29	<=	42.18	kg/d
5/31/2018	BOD, 5-day, 20 deg. C	MO AVG	50	<=	30	mg/L
5/31/2018	BOD, 5-day, 20 deg. C	WKLY AVG	72.56	<=	63.04	kg/d
5/31/2018	BOD, 5-day, 20 deg. C	WKLY AVG	52	<=	45	mg/L
5/31/2018	Solids, total suspended	MO AVG	87.07	<=	84.35	kg/d
5/31/2018	Solids, total suspended	MO AVG	62	<=	60	mg/L
5/31/2018	E. coli	30DA GEO	2000	<=	126	#/100mL
5/31/2018	E. coli	DAILY MX	2000	<=	235	#/100mL
5/31/2018	BOD, 5-day, percent removal	MN % RMV	74	>=	85	%
5/31/2018	Solids, suspended percent removal	MN % RMV	46	>=	65	%
6/30/2018	E. coli	30DA GEO	2000	<=	126	#/100mL
6/30/2018	E. coli	DAILY MX	2000	<=	235	#/100mL
6/30/2018	Solids, suspended percent removal	MN % RMV	63	>=	65	%
4/30/2019	BOD, 5-day, 20 deg. C	MO AVG	54.42	<=	42.18	kg/d
4/30/2019	BOD, 5-day, 20 deg. C	MO AVG	39	<=	30	mg/L
4/30/2019	BOD, 5-day, percent removal	MN % RMV	82	>=	85	%
6/30/2019	Solids, total suspended	WKLY AVG	135.60	<=	126.08	kg/d

## Birch Hill Stabilization Lagoon

### Effluent Limit Exceedances Report

WI0036579: BAD RIVER INDIAN RESERVATION, BIRCH HILL, WI 54861

Monitoring Period Date Range: 06/01/2016 to 03/31/2021

### Exceedance Details

Monitoring			DMR	Limit		DMR
Period Date	Parameter Description	Limit Type	Value	Value	Qualifier	Value
6/30/2019	Solids, total suspended	WKLY AVG	97	<=		90
6/30/2019	E. coli	30DA GEO	137	<=		126
6/30/2019	E. coli	DAILY MX	2000	<=		235
11/30/2019	E. coli	30DA GEO	529	<=		126
11/30/2019	E. coli	DAILY MX	2000	<=		235
12/31/2019	BOD, 5-day, 20 deg. C	MO AVG	41	<=		30
12/31/2019	BOD, 5-day, 20 deg. C	MO AVG	56.69	<=		42.18
12/31/2019	E. coli	DAILY MX	2000	<=		235
12/31/2019	E. coli	30DA GEO	2000	<=		126
12/31/2019	BOD, 5-day, percent removal	MN % RMV	75	>=		85
12/31/2019	Solids, suspended percent removal	MN % RMV	49	>=		65
5/31/2020	BOD, 5-day, 20 deg. C	MO AVG	43.54	<=		42.18
5/31/2020	BOD, 5-day, 20 deg. C	MO AVG	31	<=		30
5/31/2020	Solids, total suspended	MO AVG	77	<=		60
5/31/2020	Solids, total suspended	MO AVG	107.94	<=		84.35
5/31/2020	E. coli	30DA GEO	140	<=		126
5/31/2020	Solids, suspended percent removal	MN % RMV	0	>=		65
6/30/2020	Oxygen, dissolved (DO)	DAILY MN	4	>=		5
6/30/2020	E. coli	DAILY MX	1300	<=		235
6/30/2020	E. coli	30DA GEO	853	<=		126
6/30/2020	Solids, suspended percent removal	MN % RMV	5	>=		65
11/30/2020	Solids, total suspended	MO AVG	80	<=		60
11/30/2020	E. coli	30DA GEO	2000	<=		126
11/30/2020	E. coli	DAILY MX	2000	<=		235
11/30/2020	Solids, suspended percent removal	MN % RMV	0	>=		65
12/31/2020	Oxygen, dissolved (DO)	DAILY MN	4	>=		5
12/31/2020	Solids, total suspended	MO AVG	92.97	<=		84.35
12/31/2020	Solids, total suspended	MO AVG	66	<=		60
12/31/2020	E. coli	30DA GEO	2000	<=		126
12/31/2020	E. coli	DAILY MX	2000	<=		235
12/31/2020	Solids, suspended percent removal	MN % RMV	0	>=		65

## Diaperville Stabilization Lagoon

### Effluent Limit Exceedances Report

WI0036544: DIAPERVILLE STABILIZATION LAGOON, ODANAH, WI 54861

Monitoring Period Date Range: 06/01/2016 to 06/30/2021

#### Exceedance Details

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Limit Value Qualifier	Limit Value	Limit Value Unit
9/30/2016	E. coli	DAILY MX	2000	<=	235	#/100mL
9/30/2016	E. coli	30DA GEO	387	<=	126	#/100mL
11/30/2019	Oxygen, dissolved (DO)	DAILY MN	3	>=	5	mg/L
12/31/2019	Oxygen, dissolved (DO)	DAILY MN	4	>=	5	mg/L
5/31/2020	E. coli	30DA GEO	180	<=	126	#/100mL
6/30/2020	E. coli	DAILY MX	1400	<=	235	#/100mL
5/31/2021	Oxygen, dissolved (DO)	DAILY MN	3	>=	5	mg/L

## ATTACHMENT B – REPORTING VIOLATIONS

### Overdue NPDES Permit Reports

#### **Diaperville Stabilization Lagoon (WI0036544)**

Operation & Maintenance Plan Reports by January 31, 2020 and 2021 [Part I.E.5.b];  
Pollutant Minimization Program for Mercury Status Report by January 31, 2020 and 2021 [Part I.E.9];  
Mercury Operational Evaluation Report by January 31, 2020 [Part I.E.10];  
Feasible Alternative Analysis and Status Report by June 30, 2020 [Part I.E.10]

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#### **Birch Hill Stabilization Lagoon (WI0036579)**

Operation & Maintenance Plan Reports by January 31, 2020 and 2021 [Part I.E.5.b];  
Pollutant Minimization Program for Mercury Status Report by January 31, 2020 and 2021 [Part I.E.10];  
Mercury Operational Evaluation Report by January 31, 2020 [Part I.E.11];  
Feasible Alternative Analysis and Status Report by June 30, 2020 [Part I.E.11]; and  
Phosphorus Operational Evaluation Report by January 31, 2020 and 2021 [Part I.E.9]

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#### **Bad River WWTP (WI0036587)**

Operation & Maintenance Plan Reports by January 31, 2020 and 2021 [Part I.C.3.b];  
Pollutant Minimization Program for Mercury Status Report by January 31, 2020 and 2021 [Part I.C.4];  
Mercury Operational Evaluation Report by January 31, 2020 [Part I.C.5];  
Feasible Alternative Analysis and Status Report by June 30, 2020 [Part I.C.5]; and  
Phosphorus Operational Evaluation Report by January 31, 2020 and 2021 [Part I.C.12]

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